

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.184 OF 2006
WITH
CRIMINAL REVISION APPLICATION NO.323 OF 2006**

Divakar Madhukar Garud & Anr. ...Applicants
(In both the Applications)

Vs.

The State of Maharashtra & Anr. ...Respondents
(In both the Applications)

Shri Balkrishna Joshi for the Applicants in both the Applications.

Shri Rajesh More, A.P.P. for the State in both the Applications.

Shri Shaikh Vasim Isamiya for the Respondent No.2 in both the Applications.

**CORAM : A. S. OKA, J.
DATE : SEPTEMBER 11, 2006.**

P.C.:

1. Heard the learned Advocate appearing for the Applicants, the learned A.P.P. for the State and the learned Advocate appearing for the second Respondent. The Applicants in Revision Application have been convicted for offence punishable under section 138 of the Negotiable Instruments Act, 1881. The order of conviction and sentence has been confirmed in Appeal. The Criminal Application No.184 of 2006 has been filed for compounding of offence as there is an amicable settlement between the Applicants and the second

Respondent who is the original complainant. Affidavit
of the second Respondent (original complainant) has
been filed in this Application. In paragraph No.6 of
the affidavit the second Respondent has stated thus:

"6. Now we both i.e. Petitioner Atul
Ladhe and Divakar M.Garud and Respondent i.e.
Jeevanbhai Poonamchand Mehta reached at
compromise and settled the matter out of
court, Petitioner have given me demand draft
No.001077, Dt.07/09/2005 of Janlaxmi Co.Op.
Bank Ltd., Nashik Branch Mahatma Nagar, Nashik
of Rs.30,000/- Thirty Thousand only and
remaining amount Rs.10,000/- in cash towards
my out standing dues against above said cheque
No.189596 of H.D.F.C. Bank Nashik Branch. I
have no complaint against Petitioner, 1.
Hotel 64, Down Street, 2. Atul Ladhe, 3.
Divakar M. Garud.

. I have received the total amount of
Rs.40,000/- and owe nothing from the
petitioner I wish to compound the said matter,
I wish to withdraw the complaint against the
petitioner and I am doing so without any undue

influence or threat or coercion. I am
willfully and in my full senses willing to
withdraw the complaint against all the
petitioner. Now I have no objection to
withdraw to original complaint i.e. Summary
Case No.452/2003."

2. The learned Advocate appearing for the second
Respondent also confirms the correctness of what is
stated in the affidavit and states that the second
Respondent has no objection for compounding the
offence.

3. Under section 147 of the Negotiable Instruments
Act, 1881 the offence under section 138 of the said Act
of 1881 has been made compoundable. In the present
case, the second Respondent who is the original
complainant has stated that he has no objection for
compounding the offence. Hence, Criminal Application
No.184 of 2006 deserves to be allowed and consequently,
Revision Application will have to be disposed of.

4. Hence, I pass the following order:

(i) The Criminal Application No.184 of 2006 is

allowed.

(ii) The conviction and sentence of the Applicants in Criminal Case No.452 of 2003 is quashed and set aside and the Applicants are acquitted of offence under section 138 of the Negotiable Instruments Act, 1881.

(iii) Rule is accordingly made absolute in terms of prayer (b) of Criminal Revision Application No.323 of 2006.

JUDGE